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Supreme Court, U.S.
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NO. 89-460

In the Supreme Court of the United States

OCTOBER TERM 1989

MARATHON OIL COMPANY

Petitioner

VERSUS

McMORAN OFFSHORE EXPLORATION COMPANY, ET AL

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENT ODECO, INC.

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QUESTIONS PRESENTED

Correctly stated, Marathon Oil Company's Petition for Writ of Certiorari raises the following issues for review:

1. Whether the U.S. Court of Appeals for the Fifth Circuit correctly interpreted and applied the rule in *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927), to dismiss the claim presented by Petitioner for purely economic losses allegedly sustained following a rupture to an offshore natural gas pipeline in which it did not have an ownership or proprietary interest.

2. Whether Petitioner is entitled to recover its claim for purely economic damages allegedly sustained when a natural gas pipeline ruptured during an offshore oil rig move operation, when Petitioner did not own or operate or have any proprietary interest whatsoever in that pipeline and where Petitioner itself did not suffer any physical damage as a result of that casualty.

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STATEMENT OF THE CASE

The facts of the case are thoroughly set forth in the opinion of the United States Court of Appeals for the Fifth Circuit, 877 F.2d 1214 (5th Cir. 1989). Marathon Oil Company's relationship to this incident is reported specifically at pages 1219-20 and 1223-26 of the opinion.

On January 1, 1983, an underwater pipeline was damaged during the relocation of an offshore drilling rig in the Gulf of Mexico. Texas Eastern Transmission Corporation (TETCO) was the sole owner and operator of that pipeline. The TETCO 20-inch natural gas pipeline extended from South Pass Block 89 across the seabed of the Gulf of Mexico through West Delta Block 105 across to Venice Station in southeast Louisiana.

TETCO constructed the pipeline in 1981 following Marathon's discovery of natural gas in South Pass 89. However, TETCO constructed the pipeline not only to provide access to Marathon's gas reserves in South Pass Block 89, but also to transport natural gas for other producing companies operating in that area of the Gulf; TETCO in fact constructed several "tie-in" points along its pipeline to transport the gas produced by other companies. TETCO constructed the pipeline at its sole cost; none of the producing users of that pipeline, including Marathon, contributed any amounts towards the pipeline's construction, nor did they otherwise participate in its construction. TETCO had the sole responsibility for the operation, maintenance, and repair of the pipeline.

Following the casualty, TETCO shut in its pipeline for a substantial period of time until it could be repaired. During that interval, no natural gas was transported through the pipeline. As a result, Marathon Oil Company

brought suit against those companies involved in the ill-fated rig move, and claimed for purely economic losses in the form of deferred oil and gas production allegedly suffered as a result of its inability to use the TETCO pipeline. Marathon did not claim for nor did Marathon suffer any physical damage to its platform or to any of its other property which was adjoined to the TETCO pipeline.

The District Court, Judge Marcel Livaudais, dismissed Marathon's claim, relying on the rule enunciated in *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927), as interpreted and applied by the U.S. Court of Appeals for the Fifth Circuit in *State of Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 (5th Cir. 1985).

On appeal, Marathon presented several arguments that it had a "proprietary interest" in the pipeline, such that it should be allowed to recover notwithstanding the *Robins/TESTBANK* rule. The Court of Appeals, however, rejected these arguments as having no factual merit. 877 F.2d at 1223-26. The Fifth Circuit affirmed the District Court's conclusion that Marathon had no ownership or proprietary interest whatsoever in the TETCO pipeline, commenting that the evidence "underscored the essential independence of Marathon and TETCO's enterprises: Marathon produces and sells gas; TETCO purchases and transports it." 877 F.2d at 1226.

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. Petitioner's appeal does not raise any issues of law which require the Supreme Court's intervention. Petitioner does not articulate any "special and important reasons" to support its contention that this Court should exercise its discretionary power of review as

review as described in Supreme Court Rule 17. There are no issues of constitutional law; there are no issues involving a conflict of federal statutory or federal common law; and there are no issue involving a conflict concerning federal maritime law.

II. The decision below is in full accord with the rule enunciated by this Court in *Robins Dry Dock & Repair Co., v. Flint*, 275 U.S. 303 (1927). The decision below is entirely consistent with the Fifth Circuit's previous applications of the *Robins* rule, and the decision below is entirely consistent with the treatment of the *Robins* rule given by the other federal circuits. There is no conflict in the federal circuits concerning the interpretation or application of the *Robins* rule.

III The decision below is not in direct or indirect conflict with the Louisiana Supreme Court's decision in PPG Industries, Inc. v. Bean Dredging, 447 So. 2d 1058 (La. 1984). The Louisiana Supreme Court was not called upon to decide a federal question, but was instead called upon to interpret state law, although that state law previously had been based entirely on the *Robins* rule. Instead of a conflict, the Louisiana Supreme Court's decision and rationale fully vindicates the continued vitality of the *Robins* rule.

IV. In *East River Steamship Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858 (1986), this Court recently acknowledged the continued utility of the *Robins* rule.

ARGUMENT

Petitioner seeks a writ of certiorari on two grounds:

(1) Relying on Supreme Court Rule 17.1(a), Petitioner argues that the Fifth Circuit's decision below is in direct conflict with the decisions of the various federal circuits in their interpretation and application of this Court's rule in *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303 (1927);

(2) Relying on Supreme Court Rule 17.1(a), Petitioner argues that the Fifth Circuit's decision below is in direct conflict with the Louisiana Supreme Court's decision in *PPG Industries Inc. v. Bean Dredging*, 447 So. 2d 1058 (La. 1984), Petitioner alleging that the Fifth Circuit and the Louisiana Supreme Court have decided a federal question in a conflicting and inconsistent manner.

Respondents submit that the Court should exercise its discretion to deny the writ of certiorari. Petitioner's arguments in support of its petition have no legal or factual merit, and petitioner's alleged grounds supporting the writ are totally illusory.

I.

Petitioner's appeal does not raise any questions of law which require the Supreme Court's intervention. Petitioner does not articulate any "special and important reasons" to support its argument that this Court should exercise its discretionary power of review, as described in Supreme Court Rule 17. There are no issues of Constitutional law; there are no issues involving a conflict of federal statutory or federal common law; and there are no issues involving a conflict concerning federal maritime law.

Certiorari should not be granted since this case does not involve any legal principles of any public importance. See *Rice v. Sioux City Memorial Park Cemetery* 349 U.S. 70, 79 (1955). Instead, the principles involved herein are only factual in nature and then only among the parties to this litigation rather than the public at large.

Supreme Court Rule 17 provides that a review on writ of certiorari is a matter of judicial discretion, and will only be granted "when there are special and important reasons therefor." Admittedly, Rule 17 does not fully measure or limit the Court's discretion, but Rule 17 nevertheless implies that there must be a substantial federal question presented to warrant the granting of certiorari. A substantial federal question is totally lacking in Petitioner's appeal. Petitioner does not raise any evidence that the Fifth Circuit's decision below has "so far departed from the accepted and usual course of judicial proceedings, or so far has sanctioned such a departure by the lower court" as to warrant an exercise of this Court's power of supervision. On the contrary, the Fifth Circuit's decision is in complete accord with this Court's decision in *Robins Dry Dock & Repair Co. v. Flint*, with its own previous interpretations and applications of the *Robins* precedent, and with the interpretation and application given that precedent by the other federal circuit courts of appeal. Quite simply, there exists no reasons to justify granting the writ of certiorari.

II.

There is no need for this Court to grant the writ of certiorari, since there does not exists any genuine or direct conflict among the federal circuit courts of appeal in the application and interpretation of this Court's decision in *Robins Dry Dock & Repair Co. v. Flint.* The decision below is entirely consistent with the Fifth Circuit's previous con-

siderations of the *Robins* rule and with the other federal circuit courts of appeals' treatment of the *Robins* rule.

The decision below was based on this Court's ruling in *Robins Dry Dock & Repair Co. v. Flint,* 275 U.S. 303 (1927), and based on the Fifth Circuit's application of the *Robins* precedent in *State of Louisiana ex rel. Guste v. M/V TESTBANK,* 752 F.2d 1019 (5th Cir. 1985) [en banc]. In *Robins,* a time chartered vessel was damaged while in drydock as a result of the negligence of the ship's repairer; this damage to the ship extended the repair period and the time charterer's nonuse of the vessel. The time charterer, who was contractually obligated to pay the shipowner charter hire during the repair, sued the ship repairer for the delay encountered by these extended repairs. The Supreme Court denied the time charterer recovery, holding that the time charterer did not have a property interest in the vessel authorizing recovery against the ship repairer for its negligence in causing the delay. The Supreme Court stated:

> The damage was material to them [time charterers] only as it caused the delay in making the repairs, and that delay would be a wrong to no one except for the petitioner's contract with the owners. The injury to the propeller was no wrong to the respondents but only to those to whom it belonged. But suppose the respondents' loss flowed directly from that source. Their loss arose only through their contract with the owners — and while intentionally to bring about a breach of contract my give rise to a cause of action, [citation omitted] no authority need be cited to show that, as a general rule, at least, a tort to the person or property of one man does not make the tortfeasor liable to another merely because the injured person was under a contract with that other unknown to the doer of the wrong. [Citations omitted.] The law does not spread its protection so far.

> . . . But justice does not permit that the petitioner be charged with the full value of the loss of use unless there is someone who has a claim to it as against the petitioner. Respondents have no claim either in contract or in tort, and they cannot get a standing by the suggestion that if someone else had recovered it, he would have been bound to pay over a part by reason of his personal relations with the respondents.

275 U.S. at 308-309.

Although the U.S. Court of Appeals for the Fifth Circuit routinely had considered the *Robins* rule on several earlier occasions, in *State of Louisiana ex rel. Guste v. M/V TESTBANK,* 752 F.2d 1019 (5th Cir. 1985), the Fifth Circuit en banc thoroughly analyzed the *Robins* precedent and its rationale in light of present day public policy considerations, and concluded that the *Robins* rule remained a "pragmatic limitation . . . upon the tort doctrine of foreseeability." 752 F.2d at 1023. Otherwise, concluded the Fifth Circuit, allowing recovery for mere loss of an economic expectancy in the absence of physical damage to one's property would result in a rule that had no determinable measure on the limit of foreseeability, and consequently, liability would be limitless. 752 F.2d at 1024.

Simply stated, the *Robins/TESTBANK* rule states that a party who has no ownership or proprietary interest in the damaged property may not recover in maritime tort against a tortfeasor for purely economic losses not associated with physical damage, where the tortfeasor's interference in the party's contractual rights is not intentional and where the tortfeasor had no knowledge of the contract's existence. In other words, a claimant cannot recover in maritime tort for purely economic losses unassociated with physical damage to property in which

the claimant has no ownership or proprietary interest. Applied to the facts and evidence in the case below, the Fifth Circuit properly dismissed Petitioner's claim for purely economic losses in the form of deferred oil and gas production, since Marathon had no ownership or proprietary interest in the damaged TETCO pipeline.

Petitioner's suggestion that the Fifth Circuit's decision below is in direct conflict with the *Robins* decision, or that it is in direct conflict with the application of that precedent by the various federal circuits, is totally without merit. The decision below is entirely consistent with the approach and application given *Robins* by all of the federal circuit courts of appeal.

The Fifth Circuit has had the most opportunity to consider and review the continued viability of the *Robins* rule, and in each instance, the Fifth Circuit has been consistent in its approach and application of *Robins*. See *State of Louisiana ex rel. Guste v. M/V TESTSBANK*, 752 F.2d 1019 (5th cir. 1985) [reviewing *Robins* jurisprudence among the circuits]. In those cases where the claimant has sought purely economic damages not associated with physical injury, recovery has been consistently denied where the claimant failed to establish an ownership or proprietary interest in that property or where the plaintiff failed to establish that its damages were suffered as a direct and proximate result of the defendant's tortious activity. See *Mathiesen v. M/V OBELIX*, 817 F.2d 345 (5th cir. 1987); *Cargill Inc. v. Doxsford & Sunderland Ltd.*, 782 F.2d 496 (5th Cir. 1986); *State of Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F.2d 1019 (5th Cir. 1985); *Akron Corp. v. M/V CANTIGNY*, 706 F.2d 151 (5th Cir. 1983); *Louisville & Nashville R.R. Co. v. M/V BAYOU LACOMBE*, 597 F.2d 469 (5th Cir. 1979); *Dick Meyers Towing Service v. United States*, 577 F.2d 1023 (5th Cir. 1978); *Kaiser Aluminum*

Chemical Corp. v. Marshland Dredging Co., 455 F.2d 957 (5th Cir. 1972). See *In re Lloyd's Leasing Ltd. v. Conoco*, 868 F.2d 1447 (5th Cir. 1989). On the other hand, recovery has been allowed where the claimant established that it suffered, along with its economic damages, physical injury to property in which it had an ownership or proprietary interest. *Domar Ocean Transportation Ltd. v. M/V ANDREW MARTIN*, 754 F.2d 616 (5th Cir. 1985) [held, under facts of this case, owner of tug in integrated tug/tow unit had a proprietary interest in the barge; *Rogers Terminal & Shipping Corp. v. International Grain Transfer Inc.*, 672 F.2d 464 (5th Cir. 1982) [owner of floating grain elevator entitled to recover damages suffered as a result of collision, notwithstanding that floating grain elevator was under bareboat charter]; *Vicksburg Towing Co. v. Mississippi Marine Transport Co.*, 609 F.2d 176 (5th Cir. 1980) [owner of barge unloading facility entitled to recover lost rentals suffered when its facility was damaged in collision].

The Fifth Circuit's decision below is also entirely consistent with the application of the *Robins* rule in the First, Second, Third, Fourth, Sixth, Ninth and Eleventh Circuit Courts of Appeal. In *Barber Lines A/S v. M/V DONAU MARU*, 764 F.2d 50 (1st Cir. 1985), the First Circuit adopted the same approach to *Robins* as did the Fifth Circuit in *TESTBANK*. In fact, the First Circuit specifically rejected the view advocated by the dissent in TESTBANK. Therefore, the decision below cannot be construed to be in conflict with the First Circuit's approach to *Robins*.

Petitioner cites the Second Circuit's decision in *In re Kinsman Transit Co.*, 388 F.2d 821 (2d Cir. 1968) in support of its contention that there is a conflict in circuits. In *Kinsman*, the district court mechanically applied *Robins* to deny claimant's economic damages suffered as a result

of a factually complicated vessel breakaway. On appeal, the Second Circuit affirmed the lower court's ruling dismissing the claim, but chose instead to apply a "foreseeability-proximate cause" analysis. Nevertheless, the result was the same — the claims were dismissed. Furthermore, the Second Circuit's analysis vindicated the rationale behind the *Robins* rule; a close examination of the Second Circuit's opinion demonstrates that at the end of its analysis, the Second Circuit was forced to rely on *Robins*. See 388 F.2d at 825.

Nevertheless, there is no conflict between the Second and Fifth circuits in their approach to or application of the *Robins* rule. Prior to *Kinsman*, Judge Learned Hand fully embraced the *Robins* precedent and analysis in *Agwilines Inc. v. Eagle Oil & Shipping Co.*, 153 F.2d 869 (2d Cir. 1946). Moreover, subsequent to *Kinsman* the Second Circuit fully embraced the *Robins* rule to deny a time charter recovery for purely economic losses. *Federal Commerce & Navigation Co. v. M/V MARATHONIAN*, 392 F. Supp. 908 (S.D.N.Y. 1975), *aff'd*, 538 F.2d 907 (2d Cir. 1975). Quite simply, the decision below is not in conflict with the Second Circuit's approach to *Robins*.

Nor is the decision below in conflict with the Third Circuit's application of *Robins*. In *Getty Refining & Marketing Co. v. M/T FADI B*, 766 F.2d 829 (3d Cir. 1985), the Third Circuit fully embraced *Robins* and the Fifth Circuit's decision in *TESTBANK*. The third Circuit went on to note that the *Robins/TESTBANK* analysis was in accord with the *Restatement (Second) of Torts*, §766C (1977). See 766 F.2d at 831-32. Had the instant case been before the Third Circuit, the result would have been the same — the dismissal of the claim.

Petitioner argues that the decision below is in con-

flict with the Fourth Circuit's approach to *Robins*, citing *Venore Transportation Co. v. M/V STRUMA*, 583 F.2d 708 (4th Cir. 1978), in support of its contention. Petitioner's contention is without merit. In *Venore*, the Fourth Circuit permitted the time charterer to recover for economic damages in the form of loss of use of the vessel during the vessel's repair on the grounds that the charter party had in fact transferred the risk of loss of use of the vessel from the owner to the time charterer. In this sense, the time charterer then had a "proprietary interest" in the vessel by virtue of the charter party's terms and conditions. Furthermore, as noted by the Fourth Circuit, *Venore* is factually distinguishable from *Robins* by virtue of the "character of the claim asserted" in the two cases. In *Robins*, the time charterer sought to recover for lost profits suffered while the vessel was undergoing repairs, although the time charterer had not in fact paid any charter hire during that repair period. However, in *Venore*, the time charterer had actually paid charter hire and was seeking to recover for the loss of use of the vessel.

Nevertheless, *Venore* does not stand for the proposition, as suggested by petitioner, that there is a conflict within the circuits. Without citing *Robins*, the Fourth Circuit in *In re Marine Navigation Sulphur Carriers Inc.*, 638 F.2d 700 (4th Cir. 1981), applied the *Robins* rule to deny a towage service's claim for business interruption and loss of trade damages allegedly suffered when the defendant's vessel struck a bridge closing the river to marine traffic (including plaintiff's business). Applying *Robins* or applying *TESTBANK* or applying any of the other decisions applying *Robins* would have reached the same result: namely, dismissal of a claim for purely economic losses not associated with physical damage to property in which the claimant had a proprietary interest.

There is no conflict in the Sixth Circuit. Petitioner suggests that the Sixth Circuit's decision in *In re Bethlehem Steel Corp.*, 631 F.2d 441 (6th Cir. 1980), establishes a conflict within the circuits. Petitioner's contention is without merit, since the Sixth Circuit's decision was based on Canadian law, and not on American maritime law. Furthermore, the result still would have been the same had *Robins* been applied, namely, the rejection of the claim. Here, an American ship collided with a highway bridge located wholly within the territorial boundaries of Canada. The Sixth Circuit applied the Canadian Shipping Act to dismiss the claims of various vessel owners and charterers whose vessels were detained by reason of the closure of the highway bridge. Although applying Canadian law, the result would not have been different had the U.S. *Robins* rule been applied. See *In re Kingston Shipping Co.*, 667 F.2d 34 (11th Cir. 1982); *Akron Corp. v. M/V CANTIGNY*, 706 F.2d 151 (5th Cir. 1983). Moreover, there is precedent within the Sixth Circuit that the district courts follow the Fifth Circuit's approach to *Robins*. See *In re Great Lakes Towing Co.*, 395 F. Supp. 810 (N.D. Ohio 1974).

Petitioner does not comment on whether there exists a conflict with the Eighth Circuit. However, the United States District Court for the Eastern District of Missouri twice has been faced with *Robins* issues, and in both instances, has resolved those questions by applying a *Robins/TESTBANK* analysis. *Cahokia Marine Service Inc. v. American Barge & Towing Co.*, 635 F. Supp. 830 (E.D.Mo. 1986), *aff'd without published opinion*, 815 F.2d 711 (8th cir. 1987). *cert. denied*, 108 S.Ct. 141 (1987). See also, *In re Williamson Leasing Co.*, 577 F. Supp. 890 (E.D.Mo. 1984) [adopting Fifth Circuit's pre-*TESTBANK* decisions].

Petitoner incorrectly states that there exists a conflict with the Ninth Circuit, Petitioner relying on the Ninth

Circuit's decision in *Union Oil Co. v. Oppen*, 501 F.2d 558 (9th Cir. 1974) in support of its contentiion. There, the Ninth Circuit established a purported "exception" to the *Robins* rule when commercial fishermen suffer damage to their fishing grounds as a result of an oil spill. This "commercial fisherman" exception is severely limited in scope, but certainly is not relevant to the instant appeal. Marathon's petition does not present facts to fall within the scope of this commercial fisherman "exception." Nor does this "exception" constitute a conflict within the circuits, since this "exception" to *Robins* was recognized by the en banc Fifth Circuit in *State of Louisiana ex rel. Guste v. M/V TESTBANK*, 752 F.2d 1019, 1021 (5th Cir. 1984). In fact, the district court in *TESTBANK* granted recovery to the commercial fishermen on th basis of that exception, but denied recovery to all of the other claimants. See *State of Louisiana ex rel. Gustse v. M/V TESTBANK*, 524 F.Supp. 1170 (E.D.La. 1981).

There is certainly no conflict between the Fifth Circuit's treatment of *Robins* in the decision below and the Eleventh Circuit's treatment of *Robins*. See *In re Hercules Carriers Inc.*, 720 F.2d 1201 (11th Cir. 1983), *aff'd on rehearing*, 728 F.2d 1359 (11th Cir. 1984), *cert. denied*, 469 U.S. 835 (1984); *In re Kingston Shipping Co.*, 667 F.2d 34 (11th Cir. 1982).

III.

There is no "direct or apparent" conflict between the Fifth Circuit's decision below and the decision of the Louisiana Supreme Court in *PPG Industries, Inc. v. Bean Dreging*, 447 So. 2d 1058 (1984). Although maritime law may have been the applicable law, the Louisiana Supreme Court addressed the *Robins* question as a matter of Louisiana state law. In *PPG Industries, Inc.*, the lower court

mechanically applied the *Robins* rule as state law based on the Louisiana Supreme Court's earlier decision in *Forcum-James Co. v. Duke Transportation Co.*, 93 So. 2d 228 (La. 1957). The Louisiana Supreme Court affirmed the ruling of the lower court dismissing the pipeline customer's claim for loss of use of a damaged pipeline. However, the Louisiana Supreme Court rejected a "mechanical application" of the *Robins/Forcum* rule, and instead elected to pursue a "duty-risk" tort analysis required under Louisiana tort doctrine. However, in doing so, the Louisiana Supreme Court reached the same result had a "mechanical application" of *Robins* been used, thereby vindicating the rationale and public policy behind the *Robins* doctrine. Surely, the Louisiana Supreme Court's decision in *PPG Industries Inc.*, cannot be used as a basis to support the granting of Petitioner's application for a writ of certiorari.

IV.

Petitioner also suggests that this Court has been inconsistent in its application of *Robins*, petitioner relying on this Court's decision in *Aktieselskabet Cuzco v. The SUCARSECO*, 294 U.S. 394 (1935). Petitioner's suggestion is without merit. In the *SUCARSECO*, a Norwegian ship collided with an American ship on the high seas as a result of the mutual fault of both vessels. Following the collision, the Norwegian ship was forced into a port of refuge to undergo necessary repairs. In order to carry out these repairs, a portion of the ship's cargo had to be discharged; upon completion of these repairs, the cargo was reloaded and the ship completed her voyage. The ship subsequently declared a general average. Cargo owners, who were forced to contribute to the general average, filed suit against the American ship for reimbursement of their general average contributions. The American ship sought to escape liability by relying on *Robins*. However, the Supreme Court rejected this defense, stating:

> The contention as to remoteness is but another way of presenting the same question. This is not a case of an attempt, by reason of "a tort to the person or property of one man," to make the tort-feasor liable to another "merely because the injured person was under a contract with that other, unknown to the doer of the wrong." See *Robins Dry Dock & Repair Co. v. Flint* [citation omitted]. Here, cargo as well as ship was placed in jeopardy. That jeopardy was due in part to the negligence of the vessel against which the claim is made. The fact that the vessel and the cargo under the "Jason Clause" bear their proportionate shares of the expenses gives to *SUCARSECO* no ground for a contention that the expenses themselves, or the share that cargo bears, were not occasioned directly by the tort. In the light of the nature of the general average contributions, and of the event which made them necessary, the fact that they were made under the stipulation in the "Jason Clause" is no more a defense to *SUCARSECO* than is the fact that the cargo was placed on board under a contract to carry it. Indeed, *SUCAESECO* makes no contention of immunity. The question arises only because, through recovery by the cargo owner from *SUCARSECO,* Toluma's share of the ultimate division is effected. But that does not establish remoteness.

294 U.S. at 404-405.

In *SUCARSECO,* the cargo owners were permitted to recover against the noncarrying vessel because their damages (general average contributions) were suffered as a direct result of the noncarrying vessel's tortious activity; the damages suffered were not dependent on the presence of some physical injury. Moreover, by virtue of the general

average, cargo owners had a "proprietary interest" in the common marine venture, which involved the vessel, her cargo, and her freight.

In *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986), this Court indicated that the *Robins* rule remains a viable doctrine in maritime tort law. Commenting on *Robins*, this Court stated:

> In products-liability law, where there is a duty to the public generally, foreseeability is an inadequate break [citations omitted]. Permitting recovery for all foreseeable claims for purely economic loss could make a manufacturer liable for vast sums. It would be difficult for a manufacturer to take into account the expectations of persons downstream who may encounter its product. In this case, for example, if the charterers — already one step removed from the transaction — were permitted to recover their economic losses, then the companies that subchartered the ships might claim their economic losses from the delays, and the charterers' customers also might claim their economic losses, and so on. "The law does not spread its protection so far." *Robins Dry Dock & Repair Co. v. Flint* [citation omitted].
>
> And to the extent that courts try to limit purely economic damages in tort, they do so by relying on a far murkier line, one that negates the charterers' contention that permitting such recovery under a products-liability theory enables admiralty courts to avoid difficult line drawing.

476 U.S. at 874-75.

As recognized by this Court in *East River Steamship Corp.*, the *Robins* rule remains a viable doctrine in maritime tort law.

CONCLUSION

Under the circumstances, petitioner's application does not present any issue requiring Supreme Court review. Accordingly, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX: Listing of parent, Subsidiary and Affiliate Companies of ODECO, Inc. Pursuant to Supreme Court Rule 28.1

ODECO, Inc. is a wholly owned subsidiary of Ocean Drilling and Exploration Company (ODECO). ODECO has a corporate parent, Murphy Oil Corporation, which owns 60.9% of ODECO's stock. ODECO has no affiliates but does have numerous direct and indirect wholly owned subsidiaries as well as the following indirect subsidiaries which are not wholly owned:

BEN ODECO (Bermuda) Limited, BEN ODECO Drilling Limited, Pyramid Drilling S.A. and BEN ODECO Limited.